

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

STATE OF TEXAS, et al., *
*
Plaintiffs, *
*
v. * Case No. 4:20-cv-02021
*
RISING EAGLE CAPITAL *
GROUP, LLC, et al., *
*
Defendants. *

IN-PERSON, VIDEOTAPED, AND

VIDEOCONFERENCED ORAL DEPOSITION OF

JOHN C. SPILLER, II

Wednesday, March 2, 2022

IN-PERSON, VIDEOTAPED, AND VIDEOCONFERENCED
ORAL DEPOSITION OF JOHN C. SPILLER, II, produced as a
witness at the instance of the Plaintiff, the State of
Texas, and duly sworn, was taken in the above-styled
and numbered cause on Wednesday, March 2, 2022, from
10:37 a.m. to 5:41 p.m., before Debbie D. Cunningham,
CSR, in and for the State of Texas, reported via Machine
Shorthand at the offices of the Texas Attorney General,
300 W. 15th Street, 9th Floor, Austin, Texas 78701,
pursuant to the Federal Rules of Civil Procedure.

--ooOoo--

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1 ALSO PRESENT: Scott Shapiro (In person)
2 Maggie Casanova (In person)
3 Sgt. Joey Diaz (In person)
4 Sgt. Dan Smith (In person)
Leann Moch (Via Zoom)
John Hathaway (Via Zoom)
John Isaacs (Via Zoom)

5 VIDEOGRAPHER: Bill Burns (In person)
6

7 ZOOM TECH: Brian Christopher (Via Zoom)
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9 --ooOoo--
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1 we were given the URL location where we can put
2 the number in to see if it came back or who it
3 came back as the owner of it; was it AT&T,
4 Verizon, T-Mobile. Those are the three we're
5 not allowed to use. We're only allowed to use
6 other ones that were off-brand ones.

7 So that's when [sic] Jakob was
8 doing for us in the beginning; but, anyways, he
9 would put those numbers in. And we were
10 changing out the numbers every time they'd get
11 burned. We would find out when they get burned
12 because we would call our own phone number from
13 our own Switch; and it would dial the number
14 and if it came up "Scam Likely," then we'd know
15 the number was burned. So we would end up
16 using those 250 million DIDs that we received
17 that were on the -- registered as no ones as
18 our own and using those to dial from.

19 Q. (BY MR. ABERNETHY) And just to
20 clarify, can you define what a DID is?

21 A. A DID is an ANI or it's also
22 considered an NPA-NXX, which is -- the first
23 part is the area code. The second part is the
24 NPA, which is the part that determines where
25 you're at in the United States -- you could be

1 in Austin, Texas; you could be -- depending on
2 those next three numbers.

3 Q. Uh-huh.

4 A. And then the last four are just
5 random. But a DID is an ANI.

6 Q. Can you define ANI for me, as well,
7 then?

8 A. It's a phone number.

9 Q. Okay. And when you say you burned
10 numbers, what do you mean by that?

11 A. They would pop up as "Scam Likely."
12 Anytime they come up as "Scam Likely," you have
13 to change them out so that you're still able to
14 dial and still get people to answer the phone.

15 Q. What would make them show up as "Scam
16 Likely"?

17 A. Too many dials. In the beginning
18 Verizon, AT&T in 2017 weren't that good on
19 "Scam Likely." On those apps that they have
20 now, they didn't have any of those
21 configurations in the past. Usually what would
22 happen would be you would end up calling 10,000
23 numbers on one number; and then out of all
24 those people, some of them would either report
25 it to the FTC or the FCC. And once they report

1 definition of spoofing, did you -- did any
2 clients ask you to do that?

3 A. No.

4 Q. Did any clients know that you were
5 doing that?

6 MR. FRANQUI: Object to the
7 form.

8 A. I don't -- I don't remember.

9 Q. (BY MR. ABERNETHY) Did you ever
10 communicate to Health Advisors that Rising
11 Eagle was spoofing?

12 DEFENSE COUNSEL: Objection.

13 A. I never said that we were spoofing
14 because back in those days, we were -- like I
15 said, given 250 million numbers that were ANIs
16 that were not listed to any user. Those are
17 the ANIs we would be putting into our Switch to
18 make it work, to make sure that the numbers
19 would not come up "Scam Likely" or "fraud
20 likely."

21 Q. And where did you get those 250
22 million?

23 A. From the gentleman that owned Globex,
24 Mohammed.

25 Q. Do you know his full name?

1 A. Mohammed Souheil.

2 Q. And what was -- what did Globex do?

3 A. They were -- they bought R Squared.

4 R Squared was my Number 1 vendor back in the
5 day when I started.

6 Q. So did you buy those from Globex?

7 A. Huh-uh. He gave them to me.

8 Q. Why did he give them to you?

9 A. So that I'm able to dial freely.

10 Q. And how did you know Mohammed
11 Souheil?

12 A. I met him through Ryan, the owner of
13 R Squared. He introduced me to him.

14 Q. Okay. Can you tell me what R Squared
15 is?

16 A. A telecom company.

17 Q. And just to clarify again, did you
18 ever communicate to Scott Shapiro that Rising
19 Eagle was spoofing at this time?

20 DEFENSE COUNSEL: Objection.

21 A. No, I never communicated to him that
22 we were spoofing. Again, in the past, we
23 didn't notice what was going on with the DIDs;
24 but sometimes we would call his number.
25 Sometimes we'd call Michael's number on the

1 A. That was the only reason.

2 Q. Whose idea was that?

3 A. Mine.

4 Q. Okay. Did his role with the company
5 change with that?

6 A. Huh-uh.

7 Q. At that point what were his
8 day-to-day duties?

9 A. Running my dialer.

10 Q. Okay. Can you take us through a
11 typical day of what that means?

12 A. He would wake up and start the dialer
13 by 7:00 a.m. He wouldn't shut the dialer off
14 until about 8:00 or 9:00, whenever the room
15 stops. We'd get access to see the room. They
16 would give us their VICIdial login. We would
17 have access to see the room and what they're
18 doing in production, see how many calls go into
19 sales, how many long calls they had, how many
20 calls are in hot pink; or hot purple means that
21 they've been on calls longer than 20 minutes --
22 or longer than 15 minutes.

23 Q. And how much were you paying Jakob at
24 this time?

25 A. \$2,000 a week, 1,500 to \$2,000 a

1 week.

2 Q. So was that 30,000-to-40,000 number
3 just to help with getting the house?

4 A. Yes, that's it.

5 Q. Okay. Do you have any idea what you
6 paid him annually?

7 A. No.

8 Q. And what was your day to day looking
9 like at this time?

10 A. Still helping him run the dialer for
11 the most part. In 2018 I got in trouble. I
12 got arrested in Houston, Texas for evading
13 arrest in a motor vehicle. So I was dealing
14 with a court case that took up a lot of my
15 time. And, also, in 2018 I pled guilty for my
16 fourth DWI in the state of Texas, here in
17 Houston -- or here in Austin, Texas. So I was
18 also dealing with that as well. So there was a
19 lot on my plate. So even though I was helping
20 him manage my business, my priorities were
21 pretty crammed during those times.

22 Q. Okay. And -- but his day was, you
23 said, 7:00 to 8:00 or 9:00. Is that central
24 time?

25 A. Uh-huh.

1 drink anymore. So I decided to -- I switched
2 to drugs. I was using drugs on a regular
3 basis.

4 Q. And then back to Brian, so did he
5 work with Rising Eagle?

6 A. No.

7 Q. He didn't work with Rising Eagle or
8 for Rising Eagle?

9 A. Huh-uh.

10 Q. Did he have any relationship with
11 Rising Eagle or --

12 A. Huh-uh -- well, I believe at one
13 point he did run a call center for me.

14 Q. For what?

15 A. Senior medical alert devices.

16 Q. And what is that?

17 A. Devices that senior citizens wear
18 around their neck in case they get lost or they
19 need help or they fall or break their leg or
20 break their arm, break their back, fall down.
21 They can push it and it sends an emergency
22 vehicle out to their residence or wherever
23 they're located at.

24 Q. And that company was not related to
25 Rising Eagle?

1 So did she -- you said she
2 didn't do your taxes on that first look. Did
3 she ever do taxes for you?

4 A. She did finish my taxes, one of my
5 tax returns in 2018; but she -- she had told me
6 that -- because I had basically stopped her
7 process of completing them because she was
8 asking me too many questions. I wasn't willing
9 to get into it with her. And she just told me
10 she wasn't going to do any of my taxes or my
11 tax work anymore.

12 Q. And do you mean your personal taxes
13 or Rising Eagle's taxes?

14 A. Rising Eagle's taxes.

15 Q. Did you ever pay her or did Rising
16 Eagle ever pay her for these tax services?

17 A. Yeah. I -- I don't have a clue on
18 how much, but I do remember -- because back in
19 those days I only had that as my personal
20 account. So I believe I paid her from that
21 account to pay for bills, pay for the house.

22 Q. Do you remember if Rising Eagle ever
23 paid her a hundred thousand dollars in a single
24 check?

25 A. Yes.

1 Q. Do you remember what that payment was
2 for?

3 A. Yes. That was my -- I paid that to
4 myself. That was my earned income.

5 Q. Why did you write the check to her?

6 A. I put it as a cashier's check because
7 I didn't think the bank would give me hundred
8 thousand dollars in cash and allow me to
9 transfer that into my own personal account.

10 Q. So you used that to pay yourself
11 income?

12 A. Uh-huh, and we had a joint account.
13 That's the thing she deposited that money into
14 was the joint account.

15 Q. And when you say Rising Eagle paid
16 for other personal expenses, what do you mean
17 by that?

18 A. Paid for the house utilities, paid
19 for -- paid for gas, paid for food, paid for
20 outings, paid for -- everything you can think
21 of, it paid for it. I mean, that was my
22 personal checking account as well as -- as well
23 as the business. I didn't know about piercing
24 the corporate veil. I was a novice at owning
25 businesses. I didn't know what the hell I was

1 doing.

2 Q. Can you tell me what you mean when
3 you say "piercing the corporate veil," what
4 your understanding of it is?

5 A. I commingled funds that were supposed
6 to stay within Rising Eagle Capital. I used
7 them for my personal use.

8 Q. Did you ever pay anything related to
9 your legal expenses, personal legal expenses?

10 A. Uh-huh.

11 Q. Your criminal legal expenses?

12 A. Yeah.

13 Q. All right. So did Rising Eagle have
14 its own call centers?

15 A. It only had one call center, and it
16 was under the company Senior Medical Alert.

17 Q. And tell me where that was located.

18 A. Houston, Texas.

19 Q. Okay. And do you know where or
20 remember where in Houston, Texas?

21 A. Off of 610 --

22 Q. And that --

23 A. -- North Loop West.

24 Q. And that's the call center that Brian
25 Failla worked at?

1 A. Huh-uh, huh-uh.

2 MS. REYES: "Yes" or "no."

3 Q (BY MR. ABERNETHY) "Yes" or "no," please.

4 A. No.

5 Q. Did Rising Eagle itself sell any
6 goods or services?

7 A. No. The only thing it sold was
8 calls.

9 Q. And what does that mean when you say
10 you sold calls?

11 A. Calls are opted in -- or I wouldn't
12 even -- once a client is called, they're played
13 a recording. In the recording they can push
14 one or two, two to be put on our do-not-call
15 list or press one to speak with a live agent.
16 When they push one, they become a live lead.
17 That lead gets transferred to the call center.
18 The call center picks up the phone and sells
19 them. Those are calls.

20 Q. Okay. And when you say "client,"
21 what do you mean by that?

22 A. Call centers.

23 Q. Okay.

24 A. I don't mean to make your job harder.

25 Q. So do you know Health Advisors of

60

1 America?

2 A. Yes.

3 Q. And how do you know them?

4 A. They were my client.

5 Q. And can you tell me again what you
6 mean by that, what that relationship was?

7 A. They were -- Michael Smith approached
8 me first in 2017 -- or it might have been
9 sooner -- told me he had -- it might have been
10 the end of 2016, to be honest with you.

11 Irregardless, he approached me and told me he
12 needed called; and he told me how Matt Jones
13 was generating calls.

14 So I started looking into it. I
15 started researching it, found out a way to
16 generate a massive amount of leads as long as I
17 had servers. I found a company out of the
18 Philippines that were able to sell me servers
19 that were designed for robodialing or also
20 known as press-1 dialing; and I was able to
21 build -- in the first year I was able to build
22 three clusters. Three clusters means -- comes
23 with three servers, each server producing
24 150,000 calls per minute.

25 Q. And how do you know Michael Smith, or

1 A. Just to go there and see how they're
2 doing, build up some rapport with them, see how
3 their call centers are working, to talk about
4 compensation, see if they can increase -- in
5 the beginning they had us at a 250-dollar CBA;
6 and we wanted a little bit more because our
7 costs of us running the robodialer was costing
8 us around 15,000 a month, not including the
9 telecom minutes that was costing us around
10 3,000 to \$5,000 a week, not including Jakob's
11 costs. The cost of maintaining life in general
12 was adding up, so we wanted more money. So
13 that was a couple of the reasons we went to
14 Florida was to talk about them getting us paid
15 a little bit more.

16 Q. And since you were served with the
17 lawsuit, have you spoken with Mike Smith?

18 A. Huh-uh.

19 Q. And since --

20 A. No.

21 Q. And since you've been served, you
22 have not spoken with Scott Shapiro?

23 A. No.

24 Q. All right. So while you were CEO of
25 Rising Eagle, did you go to jail?

1 A. Yes.

2 Q. And when was this?

3 A. The end of 2018, the beginning of
4 2019, November the 26th, 27th.

5 Q. Of 2018?

6 A. Uh-huh.

7 Q. And then, do you know when in 2019
8 when you got out?

9 A. March.

10 Q. Did Rising Eagle continue operating
11 while you were in jail?

12 A. Yes, Jakob did continue operating it.

13 Q. Was Jakob -- well, what was -- what
14 was his role during that time?

15 A. I was in jail. I would call him and
16 see how the dialers were holding up. I'd call
17 him to see how much money Scott and Mike were
18 sending. That's basically what I was doing.
19 Jakob would start the dialer, run the dialer,
20 manage everything.

21 Q. How often did you talk to Jakob?

22 A. Every day in the morning. I'd try to
23 talk to him in the morning, and then we'd talk
24 again in the evening.

25 Q. By telephone every time?

1 MR. ABERNETHY: Thanks, Joe.

2 (Exhibit 8.1 and Exhibit 8.2

3 audio clips playing as follows:

4 MR. SHAPIRO: Are you there?

5 MR. MEARS: You're on.

6 MR. SHAPIRO: Are you there?

7 MR. SPILLER: Yeah, I'm here.

8 Okay. Go ahead.

9 MR. SHAPIRO: Yeah, I just
10 [inaudible] a little bit; but...

11 MR. SPILLER: Okay. Go ahead.

12 MR. SHAPIRO: Can you hear me?

13 MR. SPILLER: Yeah, I can hear
14 you. Go ahead.

15 MR. SHAPIRO: Yeah, yeah. So, I
16 mean, they only got 1100 in Room 2; and my room
17 is only getting, like, some 11,000, twelve,
18 maybe thirteen sometimes. I mean, I thought I
19 was going to get a lot more calls.

20 Obviously, it's a little
21 different now; but [inaudible] all the time. I
22 told Jakob I'm having 30 to 40 people waiting
23 at one time. At all times -- like, there's
24 never a time that everybody's on the phone.
25 Never. You can ask Jakob. Never. Like,

1 never.

2 Even when I send him new leads,
3 it's still never like that. That's why I think
4 the cluster is not enough [inaudible.] I don't
5 know what the problem is, but you do. I guess
6 is what I'm asking.

7 MR. SPILLER: Okay. Well, then
8 -- well, I do know -- I do know for a fact that
9 they're on a cluster, that they're already on
10 their own cluster. They're on -- they're on
11 Cluster 48. It used to be a cluster that we
12 used to use, right? So we cut it in half, and
13 we gave it half to them so they could use it.

14 So what we can do is, is we can
15 retake some of the leads that they sent us; and
16 we can put them in -- we can -- we can -- we
17 can add some more -- we can add some more clout
18 to their -- to their server.

19 MR. SHAPIRO: Yeah, because 1100
20 a day is not enough for 30 people. It's not.

21 MR. SPILLER: No, 1100 is not
22 enough for 30 people.

23 MR. SHAPIRO: Yeah, and then
24 mine is the same thing. I'm asking -- I'm
25 sending leads almost every day, and nothing. I

1 still have 30 people, 40 people waiting at a
2 time; and that's not done, never, like, when
3 you were there. I know he knows what he's
4 doing, but it -- something's wrong. That's why
5 I need you need to fix it. Something's going
6 on that I'm not getting enough calls.

7 MR. SPILLER: Yes, sir. Well,
8 then --

9 MR. SHAPIRO: Yeah.

10 MR. SPILLER: -- ultimately what
11 it comes down to is two things: It's the
12 leads; and then it's also the control of the
13 dialer, the dialer dialing out. And, hey, hey,
14 hey, and that's -- and that's something else I
15 need to tell you. You don't have to worry
16 about anything about your name being released
17 because of robodialing. Your name is a hundred
18 percent protected on the back end because when
19 I switched you over to R Squared, I protected
20 your name of your business.

21 MR. SHAPIRO: I don't -- I don't
22 know what you're talking about, robodialing.

23 MR. SPILLER: Okay.

24 MR. SHAPIRO: I don't know what
25 you mean. Yeah, I don't know what you mean.

1 MR. SPILLER: Okay.

2 MR. SHAPIRO: I don't know what
3 that is. I don't know what that is.

4 MR. SPILLER: Okay.

5 MR. SHAPIRO: [Inaudible.] All
6 right. Can you fix it or get with Jakob to fix
7 it?

8 MR. SPILLER: Yes, sir. Yes,
9 sir. I'll get with Jakob to fix it.

10 MR. SHAPIRO: Yeah, the AI calls
11 need to be fixed. They're not getting enough
12 calls.

13 MR. SPILLER: Okay. Sounds
14 good. Sounds good.

15 MR. SHAPIRO: Okay. Take care.
16 Bye-bye.

17 MR. SPILLER: Thank you.
18 Bye-bye.

19 Hey, hey, so they have 40 agents
20 waiting right now?

21 MR. MEARS: No.

22 MR. SPILLER: How many agents --

23 MR. MEARS: They're fluxing --

24 MR. SPILLER: -- do they have
25 waiting?

1 MR. MEARS: They're fluxing
2 between 15 and 30 right now.

3 MR. SPILLER: And why do they
4 flux between 15 to 30?

5 MR. MEARS: I think one file is
6 full, but it also -- the one file's full, so
7 wait; but, also, it has six calls at the same
8 time.

9 It just -- oh, well, now, it
10 [inaudible]. It just turned 10:00 o'clock
11 their time. He put from -- the first hour's a
12 little better than the second hour, a little
13 bit. Right now, they're at 20, 19.

14 (Buzzer sound.)

15 MR. MEARS: Scott's calling me
16 now.

17 MR. SPILLER: Answer it.

18 MR. MEARS: Hi, Scott. I'm
19 still talking to John.

20 MR. SHAPIRO: Say it again --
21 you're still on with him?

22 MR. MEARS: Yeah.

23 MR. SHAPIRO: Hey, put me in --
24 put me on.

25 MR. MEARS: You're -- okay.

1 You're on speaker, too.

2 MR. SHAPIRO: John, this is the
3 thing: I don't want to do robocalls; and I
4 don't want to end up doing robocalls and
5 press-ones. Doing any calls --

6 MR. SPILLER: No, sir. No, sir.

7 (Simultaneous speakers.)

8 MR. SPILLER: Yes, sir. Yes,
9 sir. Yes, sir. Yes, sir. Yes, sir.

10 MR. SHAPIRO: Okay.

11 MR. SPILLER: The only thing
12 we're using is AI calls.

13 MR. SHAPIRO: Okay. Just make
14 sure it's not robocalls and -- and -- and
15 press-ones. I don't want to do that.

16 MR. SPILLER: Yes, sir.

17 MR. SHAPIRO: So I called
18 because I didn't understand what you meant.

19 MR. SPILLER: Yes, sir, I got
20 you. No worries.

21 MR. SHAPIRO: All right. So how
22 you doing, John?

23 MR. SPILLER: Feeling good.
24 Yeah, feeling good, man. Feeling good.

25 MR. SHAPIRO: All right. Call

1 me if you guys need me.

2 John, see if you can figure out
3 what the problem is [inaudible.]

4 MR. SPILLER: Yes, sir.

5 Hey, Scott, hey, Scott, hey,
6 Scott?

7 MR. SHAPIRO: Yes.

8 MR. SPILLER: Since we -- since
9 we put you on the -- since we're putting you on
10 your own server to increase your dial speed,
11 we're going to -- we're going to ask that y'all
12 guys pay the 225 moving forward today. Okay?

13 MR. SHAPIRO: That's fine. No
14 problem.

15 MR. SPILLER: Okay. Thank you.

16 MR. SHAPIRO: Okay. All right,
17 man. Bye.

18 MR. SPILLER: Bye-bye.

19 Okay. So [inaudible] are you
20 there?

21 MR. MEARS: Yeah.)

22 (Audio playback ended.)

23 Q. (BY MR. ABERNETHY) All right. Can
24 you identify what you just heard?

25 A. A conversation between myself, Scott

1 Shapiro, and Jakob Mears.

2 Q. Do you recall that conversation?

3 A. I do not. Like I'm saying, these
4 conversations happened three years ago when I
5 was -- I mean, I was a hundred percent sober,
6 that's for sure. I just don't remember a lot
7 of the conversations that I had during those
8 times.

9 Q. Then, to your understanding, what did
10 it mean when it was said that 30 to 40 people
11 were waiting in the room?

12 A. They have agents -- agents that are
13 waiting for phone calls.

14 Q. And what does that mean, they're
15 waiting for phone calls?

16 A. Either the data was destroyed and
17 Scott needed to send us another file or Michael
18 needed to send us another file or it was the
19 person running the dialer that wasn't loading
20 -- or that wasn't assessing which file to load
21 in which campaign or in which cluster.

22 Different clusters produced a
23 higher number of calls, a higher number of
24 volume, a higher number of calls in general.
25 So 68 -- Cluster 68, Cluster 60 -- so my first

1 that we're dialing.

2 Q. And do you know who sent Rising Eagle
3 leads every day?

4 A. Scott and Mike Shapiro -- Scott
5 Shapiro and Michael Smith.

6 Q. And how do you know that during that
7 time?

8 A. Because Jakob would tell me. Jakob
9 wouldn't be able to run the business -- well,
10 we had a stockpile of leads as well. We had a
11 stockpile of leads that Scott and Mike sent us
12 since 2018 or 2017. We were always saving the
13 leads that they would send us; and I would have
14 Jakob try to mark on there which leads were
15 good, which leads were not, which leads gave us
16 the best returns, what leads didn't.

17 Q. Why were you stockpiling leads at
18 that time?

19 A. Because we were dialing millions of
20 people a day. We had to make sure we had the
21 data because -- because at some point we were
22 dialing more than 3 million numbers in a day
23 and Scott and Mike would only send us 3 million
24 numbers in a day; sometimes they'd only send us
25 1.5 million.

1 calls.

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2 Q. (BY MR. ABERNETHY) Do you have
3 access to the e-mail address that Mikel Quinn
4 would receive tracebacks on?

5 A. No.

6 Q. He would just forward them to you?

7 A. Uh-huh.

8 MS. REYES: "Yes" or "no"?

9 THE WITNESS: Yes.

10 Q. (BY MR. ABERNETHY) Did you ever have
11 access to that account?

12 A. No.

13 MR. ABERNETHY: Can we take a
14 five-minute break?

15 THE VIDEOGRAPHER: All right.

16 We'll go off at 2:33.

17 (Off the record from 2:33 to 2:44 p.m.)

18 THE VIDEOGRAPHER: We're back on
19 the record. It's 2:44.

20 Q. (BY MR. ABERNETHY) All right. Do you know if
21 Health Advisors ever used a VICIdialer?

22 A. Yes.

23 Q. And how do you know that?

24 A. They gave us access to it.

25 Q. Who is "us"?

1 A. Gave Rising Eagle Capital access to
2 it, myself and Jakob Mears, access to their
3 VICIdial so we can see how many calls are
4 coming from us and we can see -- because back
5 in the day we were the only vendor they used.
6 I believe they were using another vendor as
7 well; but then, I want to say it was around
8 month three I blew that vendor out of the water
9 by the amount of calls I was able to send them.

10 Q. So did you personally have a login?

11 A. The business had a login, not me
12 personally. Rising Eagle Capital did.

13 Q. Was that the only login that Rising
14 Eagle had?

15 A. Uh-huh. Yeah, we shared it.

16 Q. Did Jakob have access to that login?

17 A. Yes, he did.

18 Q. Did JSquared have a login?

19 A. No. We used the same login --

20 Q. Okay.

21 A. -- that was created for Rising Eagle
22 Capital.

23 Q. And could two people be logged in at
24 the same time with the same login?

25 A. I believe so.

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1 A. I think in the beginning -- I just
2 can't say. I just can't say because, honestly,
3 in the beginning, we were barely sending them
4 any calls. It wasn't until sometime in the
5 mid- -- in the middle of it -- potentially, you
6 know, I would say in the beginning probably
7 around 250,000 calls to a million calls.

8 Q. What would you say that would be as a
9 percentage of Rising Eagle's total calls?

10 A. That was all of Rising Eagle's total
11 calls.

12 Q. Did it fluctuate?

13 A. Uh-huh.

14 MS. REYES: "Yes" or "no"?

15 A. Depending on the data, yes.
16 Depending on the data and also on the DIDs that
17 we were using. Back in those days we weren't
18 using DIDs. Again, we were using disconnected
19 ANIs that we received from the owner of Globex.

20 Q. (BY MR. ABERNETHY) Do you know what
21 the peak of that call volume would have been?

22 A. The peak?

23 Q. The peak of the call volume for
24 Health Advisors.

25 DEFENSE COUNSEL: Objection.

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1 A. No, I have no clue.

2 Q. (BY MR. ABERNETHY) Do you have any
3 clue about the low of that call volume?

4 DEFENSE COUNSEL: Objection.

5 A. No.

6 Q. (BY MR. ABERNETHY) Do you know what
7 DNC scrubbing is?

8 A. Yes.

9 Q. What do you understand that to mean?

10 A. We have that on our system now,
11 federal scrubbing of the DNC list. All the
12 federal people that have gone on and removed
13 their number from the federal do-not-call
14 registry -- put their number on the general
15 call registry for the FCC.

16 Q. And by on your system now, you mean
17 Great Choice?

18 A. On Great Choice, on -- even on
19 JSquared we had it.

20 Q. Did Rising Eagle have DNC scrubbing?

21 A. Huh-uh.

22 MS. REYES: Is that a "no"?

23 THE WITNESS: No.

24 Q. (BY MR. ABERNETHY) Do you know what
25 DNC blocking is?

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1 A. No -- DNC blocking on Veriswitch?

2 Q. Just do you have any understanding of
3 the phrase "DNC blocking"?

4 A. I know it's a -- it's a functionality
5 on Veriswitch that if a call is trying to go
6 outbound and that person's on the federal
7 do-not-call registry, it automatically searches
8 for it; and it cancels the call.

9 Q. So did Rising Eagle ever have that?

10 A. Huh-uh.

11 MS. REYES: "No"?

12 THE WITNESS: No.

13 Q. (BY MR. ABERNETHY) Did Rising Eagle
14 ever use any other type of DNC blocking?

15 A. No. We trusted what Smith was
16 telling us when he said he scrubbed the leads.
17 We trusted that he scrubbed the leads. We
18 never had a SAN number.

19 Q. What's a SAN number?

20 A. It's the FCC number you get when you
21 purchase the federal do-not-call registry
22 download.

23 Q. So did Michael Smith tell you how he
24 was doing that?

25 DEFENSE COUNSEL: Objection.

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1 A. He said he had a SAN number.

2 Q (BY MR. ABERNETHY) Did you have any other
3 call-blocking lists that you would use?

4 A. Huh-uh.

5 MS. REYES: "No" or "yes"?

6 THE WITNESS: No.

7 Q. (BY MR. ABERNETHY) Did you have a
8 TCPA call list?

9 A. Not that I remember. We might have.
10 Again, I don't -- I don't have a clue in the
11 past.

12 Q. Did you ever have a litigator list?

13 A. Yes, we did. We got it from one of
14 our clients, Michael O'Hare. He had a
15 litigators list he would sell to us for \$750 a
16 month.

17 Q. And can you explain what your
18 understanding of a litigator list is?

19 A. It's all the attorney law firms that
20 are setting up honeypots, what are called,
21 where they buy ANIs and they put them out on
22 the internet. They want people to call them.
23 When people call them, they find out the
24 company that they're associated with. They
25 file a lawsuit -- a TCPA violation against

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1 them, file a lawsuit against them, and try to
2 collect anywhere from a thousand dollars up to
3 50,000 or up to a hundred thousand.

4 Q. So if you had an opted-in list, would
5 you have a need for a TCPA litigator list?

6 DEFENSE COUNSEL: Objection.

7 A. Yeah, I'd still need that.

8 Q. (BY MR. ABERNETHY) Why would you
9 still need that if you have an opted-in list?

10 A. Because an opted-in list doesn't
11 prevent the lead sellers from putting in
12 fictitious leads. A lot of times lead sellers
13 would pad the leads with more aged data that
14 they acquired in the past without scrubbing
15 them against the federal do-not-call registry.

16 Q. Can you explain what you mean by
17 "fictitious leads"?

18 A. It's a lead. They just never
19 scrubbed it against the federal do-not-call
20 registry. So being that they never scrubbed it
21 against the federal do-not-call registry means
22 that they're selling us a lead that may be
23 federal DNC'ed, which means you're not supposed
24 to call any of those numbers.

25 Q. But it's being sold as a scrubbed

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1 Q. Would Great Choice?

2 A. No.

3 Q. Did you ever scrub for state DNC
4 lists?

5 A. No. We only used the federal
6 do-not-call registry.

7 Q. And when did you start DNC scrubbing
8 with Rising Eagle?

9 A. 2019, around May.

10 Q. What made you start at that time?

11 A. We were getting leads from Scott and
12 Mike and they were saying that they were
13 scrubbed and we were wondering why there were
14 so many TCPA violations coming to them. They
15 were receiving -- at least every two to three
16 weeks they were receiving two or three
17 litigators calling them and telling them to pay
18 5,000 or \$3,000.

19 So we were basically
20 presumpting that they were potentially not
21 scrubbing against the federal do-not-call
22 registry. So we would scrub the leads after
23 they would send them to us; and it was only
24 then did we really get phone calls from Scott
25 or Mike whenever we would scrub the leads.

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1 Let's say they sent us 3 million leads; and
2 after we scrubbed it, we would end up
3 getting -- a file would get cut all the way
4 down to somewhere around 1 million. And they'd
5 give us a phone call and say, "What the hell?
6 Why'd you scrub those leads? We told you we
7 already scrubbed them."

8 Q. So did Mike Smith tell you that those
9 leads were scrubbed?

10 A. Yes.

11 DEFENSE COUNSEL: Objection.

12 Q. (BY MR. ABERNETHY) And did Scott
13 Shapiro tell you that those leads were
14 scrubbed?

15 DEFENSE COUNSEL: Objection.

16 A. On some -- on some lists. On some
17 lists. He didn't send me all the lists. A lot
18 of times Michael Smith was the one that sent me
19 the lists. Scott Shapiro would only send me a
20 handful of lists.

21 Q. (BY MR. ABERNETHY) Okay. So when
22 y'all started scrubbing, how did y'all do that?

23 A. Veriswitch has it on the back end.

24 Q. And when did you start scrubbing for
25 JSquared?

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1 A. May of 2020 -- May or April of 2020.

2 Q. And when did you start scrubbing for
3 Great Choice?

4 A. Great Choice never facilitated calls.
5 They only sold VoIP telecom minutes. So they
6 never had to scrub any leads.

7 Q. Do you know what recycling leads
8 mean?

9 A. Yeah. When a file gets finished, you
10 go into the back end; and you're able to click
11 on "recycle leads." When you click on "recycle
12 leads," it automatically takes out all the DNC
13 people that pushed two on it, kicks them out;
14 and it uploads all the others that either
15 people pressed one or didn't push a number on
16 those prerecorded messages, to get redialed
17 again.

18 Q. So did Rising Eagle recycle leads?

19 A. Yes.

20 Q. How often?

21 A. That's too far back. I can't
22 remember.

23 Q. Regularly?

24 A. Yeah.

25 Q. Did you communicate with Mike Smith

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1 basically identifies me as a perpetrator of
2 allowing that call to get into America,
3 allowing that call to reside with the consumer,
4 and whatever violations that the USTelecom came
5 up with deemed necessary for it to be
6 considered a traceback.

7 Q. And what is USTelecom?

8 A. The company that was started by David
9 Frankel that eventually got fired last year for
10 snaking clients.

11 Q. Who handled tracebacks at Rising
12 Eagle?

13 A. John Spiller.

14 Q. You handled all the -- those
15 tracebacks?

16 A. Uh-huh, unless Jakob -- I don't
17 remember Jakob ever helping me.

18 Q. So where did Rising Eagle get its
19 opt-in information from?

20 A. Scott Shapiro and Michael Smith.

21 Q. How did they get opt-in information
22 from Michael Smith?

23 A. From the leads that they purchased --
24 or in the lead that they purchased. They
25 purchased them from lead companies that had the

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1 didn't reply. I'm sorry, but I'm trying to
2 put" -- John Spiller says, "I'm sorry. I'm
3 trying to put together money to find the best
4 person for my -- for my best job possible."

5 James, "I think you feel I'm not
6 good for the job. You should have let me know
7 your mind instead of wasting each other's time.
8 I would have...done [sic] designing the program
9 that would solve the problems for you. Do you
10 think I can't handle your job?"

11 "How do I know it off a bot" --
12 or John Spiller says, "How do I know if off the
13 bot that needs to be in placed in on a website?
14 [sic] That is what I was asking. How is it
15 the bot going to find me that information on
16 the internet, which site, or how does it work?"

17 Q. We're now on page 015203.

18 A. Again, this conversation had started
19 on 8/15/2020; and the conversation, I believe,
20 ended as well on that same day. This is an
21 individual who had reached out to me and told
22 me he was going to create me a bot to search
23 the internet, for \$10,000 in bit coins. For 69
24 million numbers, he was going to find me all
25 the opted-in information that Scott and Mike

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1 couldn't give me.

2 Q. Can you just go ahead and read the
3 rest, and then we'll go over it?

4 A. Yeah.

5 Q. This is at the top of 015203.

6 A. Yeah.

7 "And no -- and now I got tools
8 for this job from the dark web" [sic.]

9 James Wilson, "How do I know it
10 off the bot that needs to be in place on the
11 website that is what" -- okay. That's what
12 John Spiller quoted. I quoted what he said.

13 "The both [sic] sorts numbers
14 and groups them into a hundred each."

15 John Spiller says, "I didn't
16 know, but okay. I'm listening. I'm just not a
17 programmer and that is why I needed more
18 explanation on what you were talking about
19 first before I send you 10,000 in bit coins
20 because I've already been scammed this year and
21 I don't want to be scammed again" [sic.]

22 "I've done jobs much more
23 complicated [sic] than this. No one will
24 charge you less. That's why I insisted you pay
25 to the company for the bot while I do the job

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1 STATE OF TEXAS)

2 REPORTER'S CERTIFICATION

3

4 I, DEBBIE D. CUNNINGHAM, CSR, hereby certify that
5 the witness was duly sworn and that this transcript is a
6 true record of the testimony given by the witness.

7 I further certify that I am neither counsel for,
8 related to, nor employed by any of the parties or
9 attorneys in the action in which this proceeding was
10 taken. Further, I am not a relative or employee of any
11 attorney of record in this cause, nor am I financially
12 or otherwise interested in the outcome of the action.

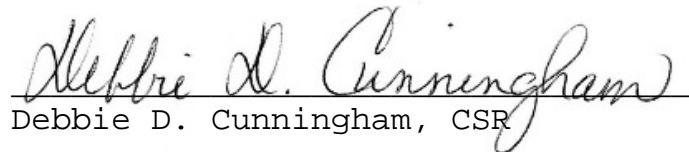
13 I further certify that pursuant to FRCP
14 Rule 30(f)(1) that the signature of the deponent was
15 requested by the deponent or a party before the
16 completion of the deposition and that the signature is
17 to be before any notary public and returned within 30
18 days from date receipt of the transcript. If returned,
19 the attached Changes and Signature Page contains any
20 changes and the reasons therefore.

21 Subscribed and sworn to by me this day, March 8,
22 2022.

23

24

25


Debbie D. Cunningham, CSR